Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

YINGLONG YANG and CHINA STAR,

Petitioners,

vs.

CARTERET REDEVELOPMENT AGENCY
(a body corporate and politic),

Respondent.

On Petition For A Writ Of Certirari
To The Supreme Court Of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the State Courts of the State of New Jersey erred in denying the landowner's motion for extension of time to file Notice of Appeal challenging the award of just compensation in an eminent domain action violated the landowner's constitutional due process right, even though the Courts still had discretions to extend the time to appeal.

II. Whether the Statutes of the State of New Jersey provides adequate due process protections for landowner's Fifth Amendment Right under the Constitution of the United States for just and fair compensation in eminent domain actions where the statutes do not require the commissioners to notify the pro se litigants the time limitations to file Notice of Appeals and the statutes assume that the pro se litigants knew or should have known the laws of the State of New Jersey.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for writ of certiorari to review the order of the Supreme Court of New Jersey in this case.

OPINIONS BELOW

The New Jersey Superior Court's opinion (per James P. Hurley, Presiding Judge) denying the petitioners' motion to file a late notice of appeal from the Report of Commissioners (Appendix ("Pet. App.") 11a-18a) is not otherwise published. The New Jersey Superior Court Appellate Division's order (Per Sapp-Peterson and Messano, Judges) affirming the decision of the Superior Court (Pet. App. 2a-10a) is not otherwise published. The Supreme Court of New Jersey summary order (per Virginia A. Long, Presiding Justice) denying the petitioner for certification (Pet. App. 1a)

STATEMENT OF JURISDICTION

The Supreme Court of New Jersey entered its summary order on October 30, 2008. Petitioners invoke this Court's jurisdiction under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides, in pertinent part:

...[N]or shall private property be taken for public use, without just compensation.

The Fourteenth Amendment of the United States Constitution provides, in pertinent part:

...[N]or shall any State deprive any person of life, liberty, or property, without due process of law;

STATEMENT OF THE CASE

The Defendant-Petitioner, Ying Long Yang, was the owner of the premise located at 99-101 Roosevelt Avenue, Carteret, New Jersey, bearing Block 254 and Lot 7. This property consists of an area of 6,233 square feet which was improved with a one story commercial building containing a total area of 3,570 square feet.

In addition, the building also consists of three commercial units. The Petitioner, Ying Long Yang, was also the owner of a Chinese restaurant, China Star, one of the three commercial stores at the premises.

On or about May 3, 2006, the Respondent, commenced the condemnation action in the Superior Court of New Jersey to acquire the property.

On or about June 27, 2006, the estimated just compensation for the taking in the amount of $210,000 was deposited with the Superior Court of New Jersey Trust Funds.

On or about July 6, 2006, the Declaration of Taking was recorded with the Office of the Middlesex

County Clerk in Book 5689 at page 14. Therefore, the title to the property was vested in the Respondent on or about July 6, 2006 pursuant to N.J.S.A. 20:3-21 (a).

On or about December 14, 2006, the Court entered an Order for Judgment and appointed three condemnation commissioners to determine the just compensation.

Before the hearing, the Petitioners, Ying Long Yang and China Star, were represented by three attorneys, Norman L. Kline, Esq., Sven Pfahlert, Esq. and Wong, Wong & Associates. In February 2007, the Petitioners released all attorneys including Wong, Wong & Associates and decided to proceed without attorneys.

On or about March 19, 2007, a Commissioners' hearing was held to decide the value of the property and the amount of the just compensation which the Respondent would be required to pay for the property.

At the time of the hearing, the Petitioner, Ying Long Yang, appeared with another person who acted as an interpreter. During the hearing, the Commissioners asked whether or not the Petitioner, Ying Long Yang, was represented by an attorney and whether or not he wanted to be represented by an attorney. The Petitioner, Ying Long Yang, said that he had already released his attorneys and did not need an attorney at the hearing. Since the Petitioner, Ying Long Yang, forgot to present his real estate appraiser, the hearing was adjourned until April 12, 2007. In addition, the Respondent arranged another interpreter because the

Commissioners wanted a disinterested and impartial interpreter.

The Commissioners' Report was issued on April 12, 2007. The amount of compensation was $330,000.00 and the Commissioners' Report was served on the Petitioners on April 16, 2007. No notice or any other reminder of the landowner's time and right to appeal was attached to the Commissioner's Report sent to the petitioner landowner.

The Petitioners' time to file a notice of appeal from the Report of the Commissioners expired on May 5, 2007 pursuant to New Jersey Rule of Court 4:73-6, twenty days since April 16, 2007.

On or about May 15, 2007, the Petitioners, Ying Long Yang and China Star, filed a notice of appeal from the Commissioners' Report and a notice of motion for extension of time to file a notice of appeal for up to thirty days since April 16, 2007 or until May 15, 2007 pursuant to New Jersey Rule of Court 4:73-6.

The Petitioners argued that they could not understand English at all and could not understand the case procedures at all. When they finally retained a law firm, Kevin Kerveng Tung, P.C., who had attorneys speaking the petitioner's native language, the deadline to file the appeal as of right had already expired. However, the court still had discretion to extend the time to file the appeal on showing of good cause.

In addition, the value of the property in the Commissioner's Report was unreasonable compared to

the value of the property in the appraisal report prepared by the Petitioners' previous attorney. This should be a good reason to grant the petitioner's motion for extension of time to file a notice of appeal.

The Respondent argued that though the Petitioners could not understand English, he hired attorneys from Wong, Wong & Associates who could speak their native language. However, the Petitioners made his own decision to discharge previous lawyers and decided to be pro se litigants.

On or about June 8, 2007, the Court below denied the Petitioners' motion for extension of time to file a notice of appeal from the Report of Commissioners. The Trial Court concluded that the Petitioners could not file a notice of appeal on time not because of their English problems, but because of their own decision to be pro se litigants. In addition, the Petitioner, Ying Long Yang, was an informed businessman who operated a Chinese restaurant. Therefore, the Court held that the Petitioners failed to show good cause for extension of time to file a notice of appeal.

On or about July 2, 2007, the Petitioners filed a notice of appeal from motion decision dated June 8, 2007 to the Appellate Division of the Superior Court of New Jersey.

On or about June 26, 2008, the Superior Court of New Jersey Appellate Division adopted and affirmed Judge James P. Hurley's decision in a short opinion.

On or about August 21, 2008, the Petitioners filed a petition for certification to the Supreme Court of New Jersey to review the court's decisions below.

On or about October 30, 2008, the Supreme Court of New Jersey denied the Petitioners' petition for certification. This appeal follows.

SUPERIOR COURT OF NEW JERSEY DECISION

The New Jersey State Court abused the discretion by denying the petitioner's motion for extension of time to file a notice of appeal. The State court's decision failed to protect landowner's Constitutional Rights, who have a poor command of English language and the New Jersey statute does not require the Commissioners to notify the landowner to file a notice of appeal within twenty days.

No evidence was proffered to prove that the defendant, Yinglong Yang, was presumed to know all the rules and laws and required to follow the laws merely because he was an experienced businessman operating a Chinese restaurant.

New Jersey Rule of Court 4:73-6 requires that a notice of appeal be filed within twenty days after the date of service of the report of the commissioners upon the parties. However, the court may extend this time for a period not exceeding thirty days upon good cause shown.

Good cause requires a valid excuse for delay in filing a notice of appeal and meritorious questions

involved in the appeal. See Appeal of Syby, 66 N.J.Super. 460, 169 A.2d 479 (1961).

Mere overlooking of the filing time is not sufficient. An extension is "invocable only when a genuinely excusable mischance has prevented the filing of the appeal in time, the adverse party is not prejudiced and the question involved is shown to be substantial and meritorious." Id., 464; See also Hodgson v. Applegate, 31 N.J. 29, 155 A.2d 97 (1959); In Re Nuese's Estate, 15 N.J. 149, 104 A.2d 281 (1954); In re Pfizer's Estate, 6 N.J. 233, 78 A.2d 80 (1951).

However, "[r]ules of procedure do not exist for their own sake, but as means to an end. They should be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.... [So these rules can be] relaxed or dispensed with if adherence to it would result in an injustice." Cimiluca v. Cimiluca, 245 N.J.Super. 149, 152, 584 A.2d 823, 824 (1990); See also Santoro v. Mayor and Council of Borough of South Plainfield, 57 N.J.Super.307, 154 A.2d 664 (1959); Monica v. Monica, 25 N.J.Super. 274, 96 A.2d 87 (1953).

The court must consider whether or not another party will be prejudiced by extension of time. See Martindell v. Martindell, 21 N.J.341, 122 A.2d 352 (1956); Fotopak Corporation v. Merlin, 34 N.J.Super. 343, 112 A.2d 578 (1955).

In the instant case, the Petitioner, Yinglong Yang, did not know the law and procedure of a

condemnation action since he was a pro se litigant. He was advised to retain an attorney to assist him in the condemnation action. He was looking for an attorney who could speak his native language. When he finally retained an attorney who could speak his native language, the time for filing a notice of appeal has already passed. Therefore, the Petitioners have a valid excuse for delay in filing a notice of appeal.

However, in denying the Petitioners' motion for extension of time to file a notice of appeal from the Report of the Commissioners, the Trial Court concluded that the Petitioners could not file a notice of appeal on time not because of their English problems, but because of their own decision to be pro se litigants. In addition, the Petitioner, Ying Long Yang, was an informed businessman who operated a Chinese restaurant. Therefore, the Court held that the Petitioners failed to show good cause for extension of time to file a notice of appeal.

It is true that the Petitioners were previously represented by three different attorneys and the Petitioners decided to be pro se litigants by their own decision. However, it was undisputed that the Petitioner, Yinglong Yang, could not understand English.

Moreover, though it is also true that an interpreter at the Commissioners' Hearing advised the Petitioners of the procedure about the Hearing, there was no evidence that the Petitioners were advised of the deadline to file a notice of appeal within twenty days. The interpreter could not be used as an attorney.

No one can be sure what was actually conveyed or translated to the Petitioners.

Nothing contained in the letter sent to the Petitioners by the Respondent with the Commissioners' Report mentioned about the deadline for filing of a notice of appeal.

The procedural rules do not exist for their own sake, but rather they are means to secure just determination. These rules should be relaxed when strict adherence would result in surprise or injustice. See Cimiluca, 245 N.J.Supere. 149 (1990); Santoro, 57 N.J.Super.307 (1959); Monica, 25 N.J.Super. 274 (1953).

The Court below clearly overlooked the fact that the Petitioners had never been advised of the deadline to file a notice of appeal from the Report of the Commissioners within twenty days. This advice is really important considering that the Petitioners were not represented by attorneys and could not understand English. The fact that the Petitioner, Yinglong Yang, was an experienced businessman is irrelevant since the experienced businessman is not equivalent to an experienced litigant and does not necessarily have information about the deadline for filing of a notice of appeal.

Furthermore, the Court also overlooked the fact that the notice of appeal from the Report of the Commissioners had to be filed within twenty days which was much shorter than the regular notice of appeal which must be filed within forty five days.

Considering this extremely short period for filing of notice of appeal. Notice to litigant about the deadline is especially essential. Strict adherence to the procedural rules would result in surprise or injustice to the Petitioners.

In addition, in the Respondent's Brief in Opposition to the Petitioners' Motion, the Respondent did not show that the Respondent would be prejudiced by extension of time to file a notice of appeal. Indeed, the Respondent will not be prejudiced merely by extending the time from twenty days up to thirty days or only ten days extension pursuant to New Jersey Rule of Court 4:73-6. Therefore, the Petitioners clearly had a reasonable excuse for extension of time to file a notice of appeal.

Finally, the Petitioners also had meritorious questions for the appeal. The Commissioner decided that the just compensation should be $330,000.00 for the Respondent to purchase the Petitioners' real property. However, this was much lower than the value of the property appraised by the appraiser retained by the Petitioners.

The appraisal value for the real property by the expert hired by the Petitioners is $417,500.00. The Petitioners also alleged that the restaurant business would be worth at least $300,000.00 because the Petitioners had run the business at the premises for nineteen years. The Petitioner, Yinglong Yang, has established his business. His family of four depends on the income from the restaurant.

Clearly, the Petitioners were under compensated. Their constitutional right was violated by the government. Under these circumstances, strict adherence to the procedural rules would indeed result in surprise or injustice to the Petitioners.

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DECISION

As a result of a lack of any safe guard procedure in the New Jersey statute tc timely remind the landowner's right to challenge the eminent domain compensation, the New Jersey Appellate Division had no measure to follow in reviewing a decision, which failed to balance the equity in the instant case; thereby, denying the petitioner landowner's motion for extension of time to appeal only for ten days. Clearly, the reason the equity was not balanced in the instant case was the result of the unconstitutional nature of the New Jersey statute.

SUPREME COURT OF NEW JERSEY DECISION

The Supreme Court of New Jersey denied the Petitioners' Petition for Certification for review of courts' decisions below.

This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

The petitioner's petition for a writ of certiorari must be granted for the reason that the New Jersey eminent domain statute, which does not require the

government to notify the petitioner landowner about the 20-day deadline to file a notice of appeal from the Report of Commissioners in order to challenge the amount of compensation, is in violation of the 14th Amendment Due Process law.

Moreover, the New Jersey statute is unconstitutional on its face where the statute itself is very ambiguous and does not define what will constitute good cause to extend the time to file a notice of appeal up to 30 days. This will result in arbitrary and capricious decision.

The law is well settled that the Due Process law requires a prior notice before taking of property for public use and the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 314, 70 S.Ct. 652,657, 94 L.Ed. 865 (1950).

"The notice must be of such nature as reasonably to convey the required information... and it must afford a reasonable time for those interested to make their appearance." Id., at 314.

Therefore, we must consider the reasonableness of the chosen means of notice and the contents of notice. See Brody v. Village of Port Chester, 434 F.3d 121 (2nd Circuit, 2005).

In the instant case, New Jersey Rules of Court 4:73-6 states that notice of appeal from the Report of

Commissioners must be taken within 20 days after a service of the Report of Commissioners upon the condemnee, either by mail or other means. The service by mail is proper where the names and addresses are at hand like in the instant case. See Id.

However, the New Jersey statutes do not require that the government inform the petitioner landowner of the 20-day deadline to file a notice of appeal from the Report of Commissioners. Obviously, the New Jersey statutes lack "the required information" for the notice to be reasonable. Mullane, 339 US 306, at 314 (1950).

In Brody, after the defendant, the Village of Port Chester, condemned the plaintiff's property for use in a large-scale municipal redevelopment project, plaintiff condemnee sued the defendant condemnor alleging that the defendant violated his Due Process rights because the New York Eminent Domain Procedure Law did not require the defendant to provide information regarding thirty-day exclusive challenge period to challenge the condemnation decision.

Under the New York law, condemnation process was split into two processes: to take title and to determine just compensation. The court stated that the average landowner would not understand that the notice of determination began the exclusive 30-day period to challenge the compensation determination. At the end of 30-day period, the landowner no longer had the right to challenge the compensation determination in New York State court. The court held that Due Process required "more explicit notice than that given to Brody" considering "the constitutional significance of

the public use requirement and the brief period allowed for reviewing the condemnor's public use determination. Brody, 434 F.3d 121, at 132 (2005).

However, the court also held that the government was not required to inform the landowner of the challenge procedure in detail and the landowner was required to conduct legal research or seek legal advice from lawyers regarding the challenge procedure. Id.

The Brody case is analogous to the instant case. Under New Jersey statute, condemnation process is also consisted of two processes like the process in New York: Taking of Property (NJSA 20:3-15 to 3-28) and Hearing to Determine Compensation (NJSA 20:3-12).

After the government took title to the property, the court will appoint commissioners and hold a commissioners' hearing to determine just compensation pursuant to NJSA 20:3-12. New Jersey Rules of Court 4:73-6 requires that the landowner file a notice of appeal within 20 days after the service of the Report of Commissioners in order to challenge the amount of compensation.

New Jersey Rules of Court 4:73-6 also states that this 20-day period can be extended for a period not exceeding 30 days upon showing of good cause.

However, New Jersey law does not require that the government inform the landowner of the above said 20-day exclusive period to challenge the amount of compensation. The absence of the due process

requirement resulted in the New Jersey State Court arbitrary and capricious decisions stating that the petitioner landowner in the instant case chose to proceed as pro se litigant and he was an experienced business man; and thus, the petitioner was required to know all statutes and procedures and to follow them.

In reality, it would unreasonable to expect the landowner to know all procedures and statutes. The average landowner will not understand that the service of the Report of Commissioners will start 20-day exclusive period to challenge the amount of compensation.

Furthermore, the landowner in the instant case did not even understand English which both the plaintiff condemnor and the New Jersey Court were aware of. Certainly, the petitioner landowner could not understand that he had only 20 days to challenge the amount of compensation.

Since Brody court decision regarding the contents of notice has not been adopted by all federal courts, the United States Supreme Court should grant a writ of certiorari to review if New Jersey State had provided sufficient procedural measures in its eminent domain statute. The need to review the instant case is imminent because if the holding in Brody is adopted, the courts across the nation will have guidance to follow in making uniform decisions.

Finally, New Jersey Rules of Court 4:73-6 does not define what will constitute good cause to extend the time to appeal not exceeding 30 days.

Moreover, there are few New Jersey case laws regarding this good cause issue. This lack of guidance will result in arbitrary and capricious decision like the one in the instant case.

Indeed, New Jersey case laws are very strict on good cause issue and the New Jersey State Court does not have discretion to enlarge time other than the one provided in the statutes and the landowner is required to file a notice of appeal within 20 days, otherwise, any rules can be relaxed and it will result in injustice. See Commissioner of Transportation v. Tenenbaum, 151 NJ Super 273, 376 A2d 1242 (1977).

Therefore, the petitioner's instant petition should be granted and the Supreme Court of the United States should declare that New Jersey statutes regarding appeal procedures in eminent domain action is unconstitutional on its face and is in violation of the landowner's Constitutional Due Process rights.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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DATED: January 26, 2009

(any footnotes trail end of each document)

C-302 September Term 2008 63,216

SUPREME COURT OF NEW JERSEY

CARTERET REDEVELOPMENT
AGENCY, etc.,
Plaintiff-Respondent,

v.

YING LONG YANG, et al.,
Defendants-Petitioners.

October 28, 2008, Decided

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5558-06 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Virginia A. Long, Presiding Justice, at Trenton, this 28th day of October, 2008.

CLERK OF THE SUPREME COURT

NO. A-5558-06T25558-06T2

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CARTERET REDEVELOPMENT AGENCY,
(a body corporate and politic),
Plaintiff-Respondent,

v.

YING LONG YANG and CHINA STAR,
Defendants-Appellants,
and
HISPANIC SOCIAL CLUB PRESIDENT,
EDYS LIQUOR, LLC, BRUNSWICK
BANK & TRUST, ATLANTIC CITY
SHOW BOAT AND CASINO, TRUMP
PLAZA ASSOCIATES d/b/a TRUMP
PLAZA HOTEL CASINO, MIDDLESEX
WATER COMPANY, STATE OF NEW
JERSEY, BOROUGH OF CARTERET (a
Municipal corporation of New
Jersey),
Defendants.

Submitted April 23, 2008-Decided June 26, 2008

Before Judges Sapp-Peterson and Messano.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-3607-06.

Kevin K.Tung, attorney for appellants.

McManimon & Scotland, attorneys for respondent (Demetrice R. Miles, on
the brief)

PER CURIAM

Defendant Ying Long Yang appeals from the trial court order denying his motion to extend the time to file a notice of appeal from the April 12, 2007 Report of Commissioners fixing just compensation for defendant's property taken by plaintiff, Carteret Redevelopment Agency (CARA), for public use. N.J.S.A. 20:3-1 to -52. We affirm.

On May 3, 2006, plaintiff, acting as the redevelopment entity for the Borough of Carteret, filed an Order to Show Cause, Verified Complaint, and Declaration of Taking in Condemnation to acquire title to defendant's property located at 99-101 Roosevelt Avenue (Property) in Carteret for public use. The property consisted of 6, 233 square feet in land area, improved by a one-story commercial building totaling 3,570 square feet that was divided into three commercial units. In addition to owing the property, defendant was also the proprietor of China Star, a fast food business operated from one of the commercial units within the property.

On June 27, 2006, plaintiff deposited $210, 000 into Superior Court, which amount represented the estimated just compensation for the property. The Declaration of Taking was recorded in the Middlesex County Clerk's Office on July 6, 2006, and title to the property vested in CARA on the same date pursuant to N.J.S.A. 20:3-21. The trial court entered an Order for Judgment and Appointment of Commissioner on December

14, 2006. Although leading up to the commissioners' hearing Yang had been represented by three different law firms, he appeared at the March 19, 2007 condemnation hearing without counsel. Yang was, however, accompanied by an individual whom Yang intended to use as an interpreter. Because defendant's real estate appraiser did not appear and also because the commissioners believed interpreting services should be performed by a disinterested and impartial interpreter, the hearing was continued until April 12, 2007. The hearing proceeded on that date as scheduled. Following the presentation of evidence, the commissioners fixed just compensation at $330,000.

On May 15, 2007, defendant filed a notice of appeal from the commissioner's report and a notice of motion for an extension of time to file a notice of appeal for up to thirty days. Defendant argued that he could not understand the procedural aspects of appealing the commissioners' decision due to language barriers, and when he finally retained counsel who could speak his native language, the time period in which to appeal the commissioners' decision had expired. The trial court denied the motion, finding:

> Defendants were represented by [first defense counsel] as early as October 17th, 2005. [First defense counsel] was subsequently replaced and substituted by [second defense counsel]. Defendant then [retained] the services of [third defense counsel] but during February 2007 defendants released their attorneys and decided to proceed without legal counsel.

It is important to note that there are attorneys at [third defense counsel's firm] that speak defendant's native language. During the hearing defendant Yang, who appeared with an individual who served as his interpreter, told the Commissioners that he released his former attorneys and did not want an attorney to represent him at the hearing. Defendant's real estate appraisal was ... appraiser was not present on March 19, 2007 so the hearing was scheduled for continuance on April 12, 2007. [The Commissioners) then also asked for a disinterested and impartial interpreter at the continuance of the hearing, which was provided. The Commissioner[s'] report was rendered on April 12, 2007 and forwarded to the respective parties on April 16, 2007.

While it is undisputed that defendant does not speak English or is not proficient in the language, but he is an informed businessman who operated a restaurant and leased business space to two other businesses at the property. In this case the failure to file a timely appeal was not [due to] defendant's lack of understanding a language but rather his decision to discharge his counsel and proceed pro se.

On appeal defendant claims the trial court abused its discretion in denying his motion, as there was no evidence demonstrating that he had been advised of twenty-day time requirement in which to appeal the Report of Commissioners. We disagree the trial court abused its discretion in denying defendant's motion.

Reviewing court "do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]'" Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 4774, 484 (1974) (quoting Fagliarone v. Twp. Of no. Bergen, 78 N.J. Super. 154, 15 (App. Div. 1963)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

A condemnation action is a summary proceeding commenced by order to show cause. See R. 4:73-1. "The aim of a summary proceeding is to expedite the litigation." See Bergen County v. S. Coldberg & Co., 39 N.J. 377, 380 (1963) (holding "the right of a litigant to be heard [in a condemnation action] is not diminished in the least by the 'summary' nature of the proceeding. Rather expedition is achieved by shortcutting procedural steps to the end that the merits will be tried at the earliest time consistent with fairness.") Consistent with the goal of expeditious condemnation proceedings, a property owner aggrieved by the commissioners' determination of just compensation originally had ten days in which to file an appeal. R.R. 4:92-6(a). Pressler, Current N.J. Court Rules, comment on R. 4:73-6 (2006) at 1742. However, consistent with the

concomitant goal of fairness is such proceedings, Rule 4:73-6(a) modified the time for filing a notice of appeal by providing:

> An appeal from the report of the commissioners shall be taken by an appellant by filing a notice of appeal with the deputy clerk of the Superior Court in the county of venue within 20 days after the date of service upon him or her, by mail or otherwise, of a copy of the report; but the court for good cause shown may extend the time for a period not exceeding 30days.

Here, although defendant failed to file a timely appeal during the twenty-day time period, he sought an extension to do so during the time Rule 4:73-6 provides for an extension to be granted, namely, an additional thirty days. Hence, the sole question before us is whether the record supports the trail judge's conclusion that defendant failed to established good cause for the extension.

The term "good cause" is used throughout our rules in a variety of contexts but eludes precise definition. See, e.g., Rule 1:13-7(a) (reinstatement after dismissal for lack of prosecution), Rule 1:40-6 (d) (removal from mediation), Rule 4:6-1 (c) (extension of time for responsive pleading), Rule 4:6-3 (deferral of preliminary), Rule 4:10-3 (protective orders), Rule 4:21 A-4(f) (relief from orders entered based on failure to appear from arbitration), and Rule 4:43-3 (setting aside entry of default). We have previously observed that "[i]t is impossible to lay down a universal definition of good cause... or an all –inclusive and definitive catalogue of all of the circumstances to be considered by a court in determining whether there is good

cause. Each case must decided upon its own facts." Ullmann v. Hartfor Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965).

Here, defendant claims that good cause for an extension was demonstrated by his ignorance of the appeal procedures, the fact that he was not told about the appeal process, and his inability to secure counsel who could speak his native language. The trail judge rejected plaintiff's explanations. In doing so, the trial judge observed that defendant had been represented by counsel as early as October 2005. Defendant replaced his first attorney with a second attorney and, by early 2007, was represented by a third firm. Defendant released that firm shortly before the hearing and decided to proceed at the March hearing pro se. The court also noted that there were attorneys employed by the third law firm who spoke defendant's native language. The court agreed that "it [was] undisputed that defendant does not speak English or is not proficient in the language [.]" Nonetheless, the court reasoned that "[Yang] is an informed businessman who operated a restaurant and leased business space to two other businesses at the property." Thus, the court concluded that defendant's "failure to file a timely appeal was not [due to] defendant's lack of understanding a language but rather his decision to discharge his counsel and proceed pro se."

We are satisfied the trial judge did not abuse his discretion in denying relief to defendant. In our review of the record, the very certification that defendant submitted in support of the motion to extend the time in which to file his appeal supports the trial judge's decision. In that certification, defendant devotes two sentences to his non-compliance with the rules. The first sentence indicates that defendant did not understand what was happening to him, and the second sentence indicates that defendant was searching for an attorney who

could speak his native language. The remainder of the certification challenges the merits of the commissioners' report. Factors that could have assisted the court in finding food cause were not set forth. For example, defendant's certification offers no explanation why he chose to discharge three law firms and ultimately proceed pro se, particularly, as the trial judge noted, when the last firm had attorneys who spoke defendant's native language. Likewise, the certification fails to set forth with specificity the actual efforts defendant undertook to secure another attorney, including when these efforts commenced. In Tuckey v. Harleysville Ins. Co., 236 N.J. Super. 211, 224 (App. Div. 1989), we stated.

> [I]itgants are free to represent themselves if they so choose, but in exercising that choice they must understand that they are required to follow accepted rules of procedure promulgated by the Supreme Court to guarantee an orderly process. Such litigants are also presumed to know, and are required to follow, the statutory law of this State.

In our view, having made the choice to proceed pro se and having participated in the condemnation hearing with a disinterested and impartial interpreter, defendant may not, without more, point to his language barrier, albeit an undisputed fact, and his inability to fine counsel proficient in his native language, as a basis for his lack of understanding of the rules. Nor may he impose a duty upon others to inform him of the rules when he is presumed to know the rules. Ibid. We therefore discern no abuse of discretion that requires our intervention and correction.

Affirmed.

June 26, 2008

No.: L3607-06

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : CIVIL PART
MIDDLESEX COUNTY

CARTERET REDEVELOPMENT AGENCY,
(a body corporate and politic),
Plaintiff-Respondent,

v.

YING LONG YANG and CHINA STAR,
Defendants-Appellants,
and
HISPANIC SOCIAL CLUB PRESIDENT, EDYS LIQUOR, LLC, BRUNSWICK BANK & TRUST, ATLANTIC CITY SHOW BOAT AND CASINO, TRUMP PLAZA ASSOCIATES d/b/a TRUMP PLAZA HOTEL CASINO, MIDDLESEX WATER COMPANY, STATE OF NEW JERSEY, BOROUGH OF CARTERET (a Municipal corporation of New Jersey),
Defendants.

ORDER

The matter being brought before the Court on motion of Kevin K. Tung, attorney for defendants YING LONG YANG and CHINA STAR, for an order extending the time to file a notice of appeal from the report of commissioners and the court

having considered argument on June 8, 2007 with Kevin K. Tung representing YING LONG YANF and CHINA STAR and the court having considered the motion, and it appearing to the Court that the defendants showed good cause for extension of time to file a notice of appeal, it is therefore, on this 8th day of June, 2007

ORDERED that the defendants' motion be denied extending the time to file a notice of appeal from the report of the commissioners for up to thirty days since the service of the report upon the defendants pursuant to R. 4:73-6.

James P. Hurley, P.J.S.C.

No.: L3607-06

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : CIVIL PART
MIDDLESEX COUNTY

CARTERET REDEVELOPMENT AGENCY,
(a body corporate and politic),
Plaintiff-Respondent,

v.

YING LONG YANG and CHINA STAR,
Defendants-Appellants,
and
HISPANIC SOCIAL CLUB PRESIDENT, EDYS LIQUOR, LLC, BRUNSWICK BANK & TRUST, ATLANTIC CITY SHOW BOAT AND CASINO, TRUMP PLAZA ASSOCIATES d/b/a TRUMP PLAZA HOTEL CASINO, MIDDLESEX WATER COMPANY, STATE OF NEW JERSEY, BOROUGH OF CARTERET (a Municipal corporation of New Jersey),
Defendants.

TRANSCRIPT OF RULING

BEFORE:

THE HONORABLE JAMES P. HURLEY, J.S.C.

Date: June 8, 2007

THE COURT: This is the matter of Carteret Redevelopment Agency versus Yang, Y-A-N-G, et als. Docket number is L-3607-06. This is a motion for extension of time to appeal a condemnation award and a cross motion to permit deposit of the balance due of just compensation into Court.

Defendant claim that on April 16, 2007 he received a report of Commissioners but did not know what it was. The very last time he was in Court he was advised to retain an attorney in the condemnation action. He did not know the Court had entered judgment against him. Defendant has to seek out an attorney that spoke his native language so he can understand the Court proceedings.

The plaintiff offered defendant $330,00 for his property. Defendant has had his property appraised at a fair market value of $417,500. Defendant also has a Chinese restaurant on the premises. The restaurant business at the premises can be sold for at least $300,000. Defendant has been clearly under-compensated, according to the defendant in this matter.

Defendant avers that although Rule 4:73-6 requires that the Notice of Appeal must be filed within 20 days after the date of service of the report of Commissioners upon the parties, the Court may extend this time period upon good cause shown. Here, defendant alleges that he was not familiar with the law and procedure of condemnation action. After defendant was advised to retain an attorney he has to seek one out that spoke his native language. When he found an attorney that spoke his native language the time for appeal has already passed.

Good cause requires a valid excuse for delay in filing a Notice of Appeal and meritorious questions involved in the appeal. The defendant refers to Appeal of Syby, S-Y-B-Y, 66 New Jersey Super, 4 – page 460, Appellate Division case, 1961.

In opposition, the – and in support of the cross motion, plaintiff states the following. The declaration of taking was recorded and filed on July 6, 2006 and $210,000, plaintiff's estimate of the just compensation, was deposited in Court. On December 13, 2006 the Court entered an order for judgment that plaintiff had duly exercised its power of eminent domain. On March 19, 2007 and April 12, 2007 a Commissioners Hearing was held and on April 12, 2007 the Commissioners issued a report finding just compensation to be $330,000.

Defendants were represented by Norman Klein, Esquire was early as October 17th, 2005. Mr. Klein was subsequently replaced and substituted by Steven Pfahlert, spelled P-F-A-H-L-E-R-T, Esquire. Defendant then returned (sic) the services of Wong, Wong and Associates but during the February 2007 defendants released their attorneys and decided to proceed without legal counsel.

It is important to note that there are attorneys at Wong, Wong & Associates that speak defendant's native language. During the hearing defendant Yang, who appeared with an individual who served as his interpreter, told the Commissioners that he released his former attorneys and did not want an attorney to represent him at the hearing. Defendant's real estate appraisal was –appraiser wan not present on March 19, 2007 so the hearing was scheduled for continuance on April 12, 2007. Defendant then also asked for a disinterested and impartial interpreter at the continuance of the hearing, which was provided. The Commissioner's report was rendered on

April 12, 2007 and forwarded to the respective parties on April 16, 2007. No appeal was filed.

While it is undisputed that defendant does not speak English or is not proficient in the language, but he is an informed businessman who operated a restaurant and leased business space to two other businesses at the property. In this case the failure to file a timely appeal was not defendant's lack of understanding a language but rather his decision to discharge his counsel and proceed pro se.

Plaintiff asked the Court to deposit the balance due, 100 – of – plus the accumulated interest with the Clerk of the Superior Court. There was no reply to the response of the plaintiff in this matter, nor was there a reply to the cross motion.

Based on all the foregoing, having read all of the papers, the Court is going to deny the motion to extend the time and grant the cross motion to deposit the funds. Rule 4:73-6 (a) states as follows, and I quote: "An appeal from the report of Commissioners shall be taken by an appellant by filing a notice of appeal with the deputy clerk of the Superior Court in the county of venue within 20 days after the date of service upon him or her by mail or otherwise or of a copy of the report. But he Court, for good cause shown, may extend the time for a period not exceeding 30 days. The notice of appeal shall be served on persons in possession and parties appearing before the Commissioners who have an interest in the property. The appellant and the notice of appeal may demand trial by jury or any other party may make such a demand within ten days after service of the notice of appeal. The notice appeal shall also include notice of an application for an order fixing the date of t he trial. Unless the Court otherwise orders, if the original action

involves a taking or takings from a tract of land under single ownership, the appeal shall be docketed under the number assigned to the original action and shall continue in that action."

Here defendant was represented by multiple counsel and chose to proceed pro se even though he was advised to retain counsel. This is not a case where a hapless defendant had absolutely no understanding of what was happening because of a language barrier. Defendant had counsel. Defendant also had an interpreter and a real estate appraiser at the Commissioners Hearing.

Defendant cities to the Appeal of Syby to argue that good cause has been shown. That case is regarding the dismissal of a civil service employee who fialed to appear for his hearing. Although this case does not seem to apply to the present matter, it nevertheless states that an extension is an extraordinary remedy.

Our experience in the few years indicates that unfortunately many attorneys construe Rule 1:27 (b) as meaning for all practical purposes that the period for filing an appeal is 75 rather than 45 days. This is a serious misconception. The fundamental policy consideration of the need for assurance to litigants to fin -- of finality in litigation and its relation to the expiration of the time allowed for appeal discussed in In Re Pfizer's Estate 6 New Jersey 233, 1951, are neither dissolved nor depreciated by the grace provision of Rule 1:27 (b). An extension under that Rule is an extraordinary remedy invokable only when a genuinely excusable mis – mischance has prevented the filing of an appeal in time. The adverse party is not prejudiced and the question involved is shown to be substantial and meritorious. These are conjunctive, not disjunctive requirements. See Martindell versus Martindell, 21

New Jersey, 341, 1956, and Hodgson, H-O-D-G-S-O-N Versus Applegate 31 New Jersey 29, 1959. Mere negligent overlooking of the time requirements is not excusable neglect or mischance. An appropriate occasion for the mis – for the interposition of Rule 1:27 (b) to save an untimely appeal is not here manifested. Taking that language from Appeal of Syby 66 New Jersey Super 460, at pages 464 to 465, that's the Appellate Division case, 1961

For the foregoing reasons the motion to extend the time is denied. The time has elapsed. The cross motion to deposit money into Court is granted.

CERTIFICATION

I, Karen Cohen, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on June 8, 2007 on tape number 2 from 2563 to 3200, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

KAREN L. COHEN, AOC #371
G& L TRANSCRIPTION OF NEW JERSEY

Date: July 29, 2007